

**Letter of Findings: 03-20191432P
Penalty and Interest
For the Tax Period of June 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business failed to demonstrate it was not responsible for penalty and interest.

ISSUES

I. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the late penalty.

II. Tax Administration - Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-8-1.5.

Taxpayer requests that the Department waive the statutory interest.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer was assessed a ten percent penalty in addition to statutory interest because it failed to timely remit its withholding tax for June 2019. Taxpayer paid the base tax and elected the "Settlement" track, requesting that the Indiana Department of Revenue ("Department") abate statutory interest and late penalty. The Department contacted Taxpayer and had a phone hearing addressing Taxpayer's request. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

The Department assessed a ten percent penalty for the tax period in question. Taxpayer requested that the Department abate the penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a

taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer requested that the Department abate the penalty on the ground that Taxpayer "inadvertently missed the payment remittance deadline due to internal processing errors." Taxpayer further states the following:

Upon discovering the error, [Taxpayer] took immediate action and submitted the payment . . . and proactively reached out to [the Department] informing them of the issue and that it was being immediately rectified.

Taxpayer thus requested that the penalty to be abated or waived.

After a review of the Department's records, however, the Department is not able to agree. Specifically, in this instance, Taxpayer was assessed a penalty due to its failure to timely remit the withholding tax, a trust tax. In addition to its poor compliance history, the Department's records further show that Taxpayer had an additional outstanding assessment for the same withholding tax for 2018, which had advanced to a warrant stage. Taxpayer was informed of that fact during the phone hearing.

In short, given the totality of the circumstances, the Department must decline Taxpayer's request.

FINDING

Taxpayer's protest of the imposition of penalty is respectfully denied.

II. Tax Administration - Interest.

DISCUSSION

Taxpayer asked that the Department waive the statutory interest.

IC § 6-8.1-10-1(a) states, "[i]f a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment."

Whenever the taxpayer makes a partial payment on its tax liability, the Department is required to apply the partial payment first to any penalty owed by the taxpayer, then to any interest owed by the taxpayer, and finally to the tax liability of the taxpayer. IC § 6-8.1-8-1.5.

A taxpayer is also responsible for a ten percent negligence penalty, interest, in addition to the base tax, when the

Department determines that the taxpayer incurs a deficiency. When a partial payment is received, the Department must apply any penalties first and then interest. As a result, the unpaid tax continues accruing the interest and the interest may not be waived under IC § 6-8.1-10-1(e).

In this instance, statutory interest is mandatory pursuant to IC § 6-8.1-10-1(a). The Department does not have the authority to waive the interest. IC § 6-8.1-10-1(e).

FINDING

Taxpayer's protest of Issue II is respectfully denied.

SUMMARY

Taxpayer's protest of the Issue I and Issue II is respectfully denied.

November 27, 2019

Posted: 02/26/2020 by Legislative Services Agency
An [html](#) version of this document.